

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JUSTIN EDMISTEN,

Petitioner,

v.

WILLIAM L. GITTERE, et al.,

Respondents.

Case No. 3:21-cv-00517-LRH-WGC

ORDER

Petitioner has submitted a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (ECF No. 1-1). Petitioner has not submitted an application to proceed *in forma pauperis* or paid the filing fee. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2.

Thus, the present action will be dismissed without prejudice to the filing of a new petition in a new action with either the \$5.00 filing fee or a completed application to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six months and a properly executed financial certificate.

It does not appear from the papers presented that a dismissal without prejudice will materially affect a later analysis of any timeliness issue with regard to a new action filed in a timely manner.¹ Petitioner at all times remains responsible for properly exhausting his claims, for calculating the running of the federal limitation period as applied to his case, and for properly commencing a timely-filed federal habeas action.

¹ Petitioner includes with his submission copies of several state-court proceedings and orders, including the Nevada Court of Appeals' December 9, 2021 order affirming the denial of his state postconviction petition. See Case No. 83145.

1 If petitioner files a new petition in the future in a new case, he is urged to briefly
2 and clearly state the factual basis for each claimed federal constitutional violation.

3 **IT IS THEREFORE ORDERED** that the Clerk detach and file the petition (ECF
4 No. 1-1).

5 **IT IS FURTHER ORDERED** that this action is dismissed without prejudice to the
6 filing of a new petition in a new action with a properly completed application form to
7 proceed *in forma pauperis*.

8 **IT IS FURTHER ORDERED** that a certificate of appealability is denied, as jurists
9 of reason would not find the court's dismissal of this improperly commenced action
10 without prejudice to be debatable or incorrect.

11 **IT IS FURTHER ORDERED** that the Clerk **send** to petitioner one copy of this
12 court's form § 2254 habeas corpus petition, one copy of the application to proceed *in*
13 *forma pauperis* with instructions, and one copy of the papers he submitted in this action.

14 **IT IS FURTHER ORDERED** that the Clerk enter judgment accordingly and close
15 this case.

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17 DATED: 2 February 2022.

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20 LARRY H. HICKS
21 UNITED STATES DISTRICT JUDGE
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